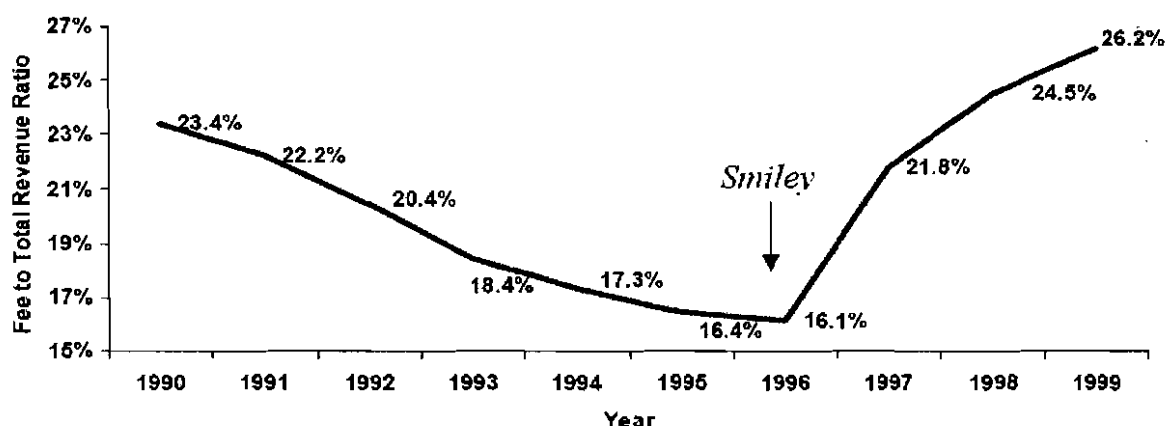


Industry reports estimate credit card late fees rose from an average of \$12.83 in 1995 to \$33.64 in 2005, an increase of over *160 percent*. Adjusted for inflation, these fees increased about 115 percent on average.

And one is able to readily see the tremendous surge in credit card fee income as a percentage of total revenue by looking at the pre-*Smiley* versus post-*Smiley* trend line below:⁷⁹

Fee Income as a Percentage of Total Revenue* 1990-1999



This history in the credit card industry should not be repeated in the CMS industry.

Congress has just recently been able to beat back some of these consumer abuses by the recent passage of the Credit Card Accountability, Responsibility, and Disclosure Act ("CARD Act").⁸⁰ The CARD Act was passed, in part, in response to over \$15 billion in penalties paid annually to the credit card industry.

One can easily see a myriad of other types of Penalty Fees buried in contractual prolix metastasize in the CMS industry if unregulated by state consumer protection laws.

⁷⁹ App., Ex. 27 at 38.

⁸⁰ Pub.L. 111-24, Title I, § 101(a)(1), May 22, 2009, 123 Stat. 1735 (codified at 15 U.S.C. §1637(i)).

B. The Obama Administration's Policy Cautions the Executive Branch Against Preempting State Law

President Obama's Administration has issued a policy statement to federal agencies to assiduously guard against using preemption to encroach on the right of states to police conduct within their borders. President Obama's directive states:

The purpose of this memorandum is to state the general policy of my Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption. Executive departments and agencies should be mindful that in our Federal system, the citizens of the several States have distinctive circumstances and values, and that in many instances it is appropriate to apply to themselves rules and principles that reflect these circumstances and values.⁸¹

Consistent with President Obama's policy to carefully limit interference with states' authority to protect their citizens, on this record the Commission should narrowly interpret the preemptive scope of Section 332.

C. Wireless Providers Can Easily Comply with State Penalty Fees Laws

When consumers filed early termination penalty class actions, wireless providers complained that it would be an onerous policy to force wireless providers to comply with different state laws. This turned out to be false. Most of these class actions were allowed to proceed and the wireless providers reached settlements with consumers in many of those cases. As a result, wireless providers modified their practices. For example, Verizon Wireless lowered its termination penalty fee from a *flat fee* of \$175,⁸² no matter how early in the contract term the consumer terminated, to a *maximum* fee of \$175, an amount which is reduced by \$5 for every month of the contract that the consumer completes.⁸³ There is no evidence that this change in practice has harmed Verizon Wireless or consumer welfare. Thus, state regulation of early termination penalties has enhanced consumer welfare and competition.

⁸¹ See App., Ex. 28.

⁸² See App., Ex. 8 at 3.

⁸³ See App., Ex. 2 at 4.

Nor is the potential lack of uniformity of the states' laws unfairly problematic. National, sophisticated businesses often contract in multiple states and have to understand and follow the statutes and common law governing contractual relationships in each of those states. Usually, state laws can be grouped categorically and this is no different with respect to laws governing Penalty Fees. For example, AT&T has a policy that appears aimed at complying with the different Penalty Fees laws of all fifty states. The provision in its consumer contract describing its late fee states: "you agree to pay, a late payment fee of \$5 in CT, D.C., DE, IL, KS, MA, MD, ME, MI, MO, NH, NJ, NY, OH, OK, PA, RI, VA, VT, WI, WV; the late payment charge is 1.5% of the balance carried forward to the next bill in all other states."⁸⁴ If AT&T is able to comply with the late fee laws of all fifty states by applying only two different late fee policies, there is no reason that the other wireless providers cannot also comply with these state laws.

VI. CONCLUSION

In sum, the weight of legal authority – as expressed by Congress, the courts and the Commission – support the conclusion that Penalty Fees are not "rates charged" under Section 332. In truth, CMS providers use these fees as part of their terms and conditions of service to punish and profit from consumers who pay late. Accordingly, Petitioners respectfully request the Commission declare Section 332 of the FCA does not preempt states from regulating these Penalty Fees.

Dated: January 13, 2010

HAGENS BERMAN SOBOL SHAPIRO LLP

By


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⁸⁴ See App., Ex. 13 at 4.

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Attorneys for Petitioners

The undersigned submits the following materials in Support of the Petition for an Expedited Declaratory Ruling that Section 332 of the Federal Communications Act Does Not Preempt California State Law Protecting Consumers Against Unlawful Penalty Fees:

- Exhibit 1: Excerpts from the Deposition Transcript of Irene Meyer, taken on April 9, 2009 in the litigation matter *Ruwe, et al. v. Cellco Partnership, d/b/a Verizon Wireless*, Case No. C 07-03679-JSW (N.D. Cal.);
- Exhibit 2: Letter, Verizon Wireless to Federal Communications Commission re Verizon Wireless's Early Termination Fee for Advanced Devices and Access to Verizon Mobile Web, WT Docket No. 05-194, CG Docket No. 09-158.
- Exhibit 3: Cheetna/Sharma U.S. Wireless Data Market Update—Q3 2009 <http://www.chetansharma.com/usmarketupdateq309.htm> (last visited Jan. 12, 2010);
- Exhibit 4: Excerpts from Verizon Communications Inc., Annual Report (Form 10-K) (Feb. 24, 2009);
- Exhibit 5: Excerpts from AT&T, Inc., Annual Report (Form 10-K) (Feb. 25, 2009);
- Exhibit 6: Excerpts from Sprint Nextel Corp., Annual Report (Form 10-K) (Feb. 27, 2009);
- Exhibit 7: Press Release, T-Mobile USA, Inc., T-Mobile USA Reports Fourth Quarter and Full Year 2008 Results (Feb. 27, 2009);
- Exhibit 8: Verizon Wireless, Customer Information Overview, Customer Agreement Terms and Conditions (2005);
- Exhibit 9: Sprint Nextel Corp., Terms and Conditions (Dec. 31, 2006);
- Exhibit 10: Sprint Nextel Corp., Terms and Conditions (Jan. 5, 2007);
- Exhibit 11: T-Mobile USA, Inc., Terms and Conditions (Dec. 2004 – June 2008), http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions2004&print=true (last visited Jan. 12, 2010);
- Exhibit 12: T-Mobile USA, Inc., T-Mobile Terms and Conditions (June 28, 2008 to present), http://www.t-mobile.com/Templates/Popup.aspx?PAsset=Ftr_Ftr_TermsAndConditions&print=true (last visited Jan. 12, 2010);
- Exhibit 13: AT&T Mobility LLC, Service Agreement, http://www.wireless.att.com/cell-phone-service/legal/service-agreement.jsp?q_termsKey=postpaidServiceAgreement&q_termsName=Service+Agreement (last visited Jan. 12, 2010);

- Exhibit 14: StationStops, AT&T Wireless: 11-Day late Bill = \$41 Disconnect?! (Dec. 16, 2009), <http://www.stationstops.com/2009/12/16/att-wireless-11-day-late-bill-41-disconnect/> (last visited Jan. 12, 2010);
- Exhibit 15: Order Denying Defendant's Motion to Dismiss, *Gellis v. Verizon Communications, Inc.*, Case No. C 07-03679-JSW (N.D. Cal. Nov. 5, 2007);
- Exhibit 16: Order Denying Defendant's Motion to Dismiss, *Gellis v. Verizon Communications, Inc.*, Case No. C 07-03679-JSW (N.D. Cal. Mar. 18, 2009);
- Exhibit 17: Order on Motion to Stay Proceedings, *Sweetnam v. T-Mobile USA, Inc.*, Case No. C 06-1463-RSM (W.D. Wash. June 14, 2007);
- Exhibit 18: Order On Motion To Dismiss Or Stay This Action, *Barahona, et al. v. T-Mobile USA, Inc.*, Case No. C 08-1631-RSM (W.D. Wash. May 15, 2009);
- Exhibit 19: T-Mobile USA, Inc., T-Mobile Even More Plans, http://www.t-mobile.com/shop/plans/Cell-Phone-Plans.aspx?catgroup=EvenMore&WT.z_shop_plansLP=EvenMore (last visited Jan. 12, 2010);
- Exhibit 20: Verizon Wireless, Select a Plan, <http://www.verizonwireless.com/b2c/store/controller?item=planFirst&action=viewPlanOverview&lid=//global//plans> (last visited Jan. 12, 2010);
- Exhibit 21: Sprint Nextel Corp., List of Individual Plans, http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans?filterString=Individual_Plans_Filter&id12=UHP_PlansTab_Link_IndividualPlans and http://nextelonline.nextel.com/NASApp/onlinestore/en/Action/DisplayPlans?filterString=Mobile_Broadband_Cards_Filter&id12=UHP_PlansTab_Link_DataPlans (last visited Jan. 12, 2010);
- Exhibit 22: AT&T Mobility LLC, Individual Cell Phone Plans, <http://www.wireless.att.com/cell-phone-service/cell-phone-plans/index.jsp> (last visited Jan. 12, 2010);
- Exhibit 23: Final Judgment and Order of Remand, *Carver Ranches Washington Park v. Nextel South Corp.*, Case No. 04 CV-80607-WPD (S.D. Fla. Sept. 24, 2004);
- Exhibit 24: Memorandum and Order, *Zobrist v. Verizon Wireless*, Case No. CV 02-1000-DRH (S.D. Ill. Dec. 3, 2002);
- Exhibit 25: Memorandum and Order, *Kinkel v. Cingular Wireless, LLC*, Case No. 02 CV-999-GPM (S.D. Ill. Nov. 8, 2002);

- Exhibit 26: U.S. Gen. Accounting Office, Credit Cards – Increased Complexity in Rates and Fees Heightens Need for More Effective Disclosures to Consumers (2006);
- Exhibit 27: Federal Reserve Bank of Philadelphia Discussion Paper, The Debate Over the National Bank Act and the Preemption of State Efforts to Regulate Credit Cards (March 2004); and
- Exhibit 28: President Barack Obama, Memorandum for the Heads of Executive Departments and Agencies re: Preemption (May 20, 2009).

Dated: January 13, 2010

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Attorneys for Petitioners

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

JOSEPH RUWE, AND ELIZABETH
ORLANDO, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

CASE NO. C07-03679
JSW

CELLCO PARTNERSHIP, d/b/a
VERIZON WIRELESS,

Defendants.

~~~~~

DEPOSITION OF  
IRENE MEYER

CONTAINS CONFIDENTIAL EXCERPTS

April 7, 2009

12:23 p.m.

600 Anton Boulevard  
Suite 1400  
Costa Mesa, California

Reported by Liz Zehner, CSR No. 8425

## CONTAINS CONFIDENTIAL PORTIONS

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1           A    I don't know.

2           Q    But there's no unit or entity or individual  
3 that's responsible for late fee revenue outside of your  
4 department; is that correct?

5           A    That's correct. To my knowledge, there is not.

6           MR. FRIEDMAN: By the way, we can take a break  
7 any time. Do you want to take a break now?

8           MR. HWANG: Let's take a break.

9           THE WITNESS: Sure.

10          (Recess)

11       BY MR. FRIEDMAN:

12          Q    We're back on the record. You understand  
13 you're still under oath?

14          A    Yes.

15          Q    We were talking about the revenue that was --  
16 that shows up on the P and L that you and/or your team  
17 looks at on a monthly basis; all right? And you seem to  
18 indicate that you hadn't talked about or analyzed or  
19 looked at late fees for a long period of time; is that  
20 correct?

21          A    That's correct.

22          Q    Why is that?

23          A    We spend our -- we drive revenue through  
24 products and services to our customers, so in the  
25 majority of what my team analyzes, we're looking at

↓

CONTAINS CONFIDENTIAL PORTIONS

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1 providing services to our customer, loyalty. We want to  
2 keep our customers, so we're looking at growth in the  
3 larger revenue streams. We don't -- we're not in  
4 business to charge customers fees, so when I'm -- so  
5 late fees and taxes aren't things that we want, I guess,  
6 aren't things that I'm trying to grow. Late fees are  
7 kind of a leading indicator of a customer paying late,  
8 and they're going to leave us probably at some point.  
9 So it's not a -- it's not something that I'm really  
10 focused on.

11 I'm looking at, and my team is analyzing the  
12 growth engine of our business, which is all of our data  
13 products, and what is the longevity and churn rate of  
14 customers that take text messaging and Easy Navigator.  
15 So it's not an item that we focus on.

16 Q Are you familiar with -- when you're looking at  
17 the P and L, you're looking at the west area of P and L;  
18 is that correct?

19 A That's correct.

20 Q Do you know, let's say, over the course of the  
21 last -- let's just take the last three months, or the  
22 last six months on average what Verizon Wireless west  
23 area revenues were per month from access charges and  
24 data charges?

25 MR. HWANG: I'm going to stop and designate

CONTAINS CONFIDENTIAL PORTIONS

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## REPORTER'S CERTIFICATION

I, Liz Zehner, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the forgoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 16th day of April, 2009.



Liz Zehner, CSR No. 8425



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December 18, 2009

Ruth Milkman  
Chief  
Wireless Telecommunications Bureau

Mark Stone  
Acting Chief  
Consumer and Governmental Affairs Bureau

Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: Verizon Wireless' Early Termination Fee for Advanced Devices and Access to  
Verizon Mobile Web, WT Docket No. 05-194, CG Docket No. 09-158**

Dear Ms. Milkman and Mr. Stone:

I write in response to your inquiry of December 4, 2009, regarding the recent change to Verizon Wireless' early termination fee (ETF) structure for "Advanced Devices" and certain reports regarding charges for our Mobile Web Service.<sup>1</sup>

Verizon Wireless' term contracts with ETFs promote consumer choice and broadband deployment. This pricing structure enables Verizon Wireless to offer wireless devices at a substantial discount from their full retail price. By reducing up-front costs to consumers, this pricing lowers the barriers to consumers to obtaining mobile broadband devices. It thus enables many more consumers, including those of more limited means, access to a range of exciting, state-of-the-art broadband services and capabilities. The company's pricing structure therefore promotes the national goal of fostering the greater adoption and use of mobile broadband services. At the same time, consumers are protected by Verizon Wireless' detailed disclosure practices described in this response, by the Worry Free Guarantee, which allows customers to terminate within 30 days of activation without an ETF, and by the monthly reduction in the ETF amount.<sup>2</sup>

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<sup>1</sup> On December 17, 2009, Commission staff granted Verizon Wireless a two business day extension of the deadline for filing its response, until December 21, 2009.

<sup>2</sup> Verizon Wireless was the first national wireless carrier to prorate its ETFs, in November 2006.

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In addition, consumers have the option of avoiding the ETF entirely by paying full price for the device and subscribing on a month-to-month basis.<sup>3</sup> The overwhelming majority of Verizon Wireless customers, however, choose to commit to a term contract because they see great value in acquiring state-of-the-art wireless devices at heavily discounted prices. In exchange, consumers sign a contract that commits them to a term of service that pays for the device (and other costs) over time.

The Commission held in 2003 that “carriers may include provisions in their customer contracts on issues such as early termination and credit worthiness.”<sup>4</sup> In that order, the Commission disallowed wireless carriers from restricting the number porting process, but also stated, “We do not sanction or encourage consumers to breach their contractual obligations. Nor do we prevent carriers from collecting any outstanding fees or charges from consumers pursuant to traditional contractual remedies.”<sup>5</sup>

That same year, in upholding the lawfulness of an ETF, the Commission noted “the history of Commission approval of early service termination provisions similar to the one at issue here, and the reasonable goals that they generally serve.”<sup>6</sup> It also stated, “The Commission has acknowledged that, because carriers must make investments and other commitments associated with a particular customer’s expected level of service for an expected period of time, carriers will incur costs if those expectations are not met, and carriers must be allowed a reasonable means to recover such costs. In other words, the Commission has allowed carriers to use early service termination provisions to allocate the risk of investments associated with long term service arrangements with their customers.”<sup>7</sup>

In its most recent annual report to Congress on wireless competition, the Commission found that “U.S. consumers continue to benefit from effective competition in the CMRS marketplace.”<sup>8</sup> The Commission noted that “Fixed-term service contracts and ETFs are part of a

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<sup>3</sup> Verizon Wireless introduced the month-to-month option for customers who choose not to select a term contract in September 2008 -- another example of the innovative offerings from wireless carriers that benefit customers. Data submitted in the Commission’s recent *Notice of Inquiry* on wireless competition also demonstrate the rapidly expanding choices consumers have among service plans to meet their individual needs. See, e.g., Comments of CTIA, WT Docket No. 09-66, filed September 30, 2009.

<sup>4</sup> *Telephone Number Portability, Memorandum Opinion and Order*, 18 FCC Rcd 20971, 20976 (2003).

<sup>5</sup> *Id.*

<sup>6</sup> *Ryder Communications Inc., Memorandum Opinion and Order*, 18 FCC Rcd. 13603, 13617.

<sup>7</sup> *Id.*

<sup>8</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Conditions With Respect to Commercial Mobile Services, Thirteenth Report*, WT Docket No. 09-27 (2009), at ¶ 274.

traditional industry business model in which providers use handset subsidies to offer consumers a discount on the upfront price of handsets and thereby promote the sale of mobile telephone services.”<sup>9</sup>

Verizon Wireless has recently instituted a two-tier structure for ETFs for term contracts. As more fully explained below, the higher ETF associated with Advanced Devices reflects the higher costs associated with offering those devices to consumers at attractive prices, the costs and risks of investing in the broadband network to support these devices, and other costs and risks.

*1. What information about the higher ETF does Verizon Wireless provide to prospective customers, and when? How do consumers know whether the increased ETF applies to the device and service plan they would like to purchase? Please provide a description of whether or how a customer seeking to sign up for Verizon Wireless service on the Verizon Wireless website would be able to find out about the levels and terms and conditions of the ETF, other than by calling up the formal Customer Agreement accessible in small type at the bottom of the web page. Please also provide a detailed description of how consumers receive relevant information across other retail sales channels, including retail outlets and sales made over the phone (if applicable). Please describe the format in which this information is presented, and provide sample materials.*

**Response:** Verizon Wireless has designed multiple ways to inform its customers about the ETFs associated with term contracts. Information about ETFs is included in Verizon Wireless’ advertisements, checklists for its sales representatives, scripts for its telesales representatives, the Customer Agreement, detailed customer guides, sales receipts, on-line store disclosures, and sales confirmation letters that are sent to customers.

Verizon Wireless’ advertising is designed to make customers aware of ETFs before a prospective customer even comes into a Verizon Wireless store, goes on-line or calls our toll-free sales number. Every print advertisement that promotes the sale of an “Advanced Device” clearly discloses that the advertised price requires a two-year contract, and that an ETF starting at \$350 may apply.<sup>10</sup> (A copy of such a print advertisement is attached as Exhibit B.) If the print advertisement promotes the sale of both Advanced Devices and regular handsets, the fact that the ETF will start at either \$175 for regular handsets, or \$350 for Advanced Devices, is likewise disclosed. (A copy of a print advertisement for both Advanced Devices and regular handsets is

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<sup>9</sup> Id. at ¶ 113.

<sup>10</sup> The “Advanced Device” category includes devices with a combination of advanced capabilities, which may include a premium HTML browser; high-resolution MP camera with optical zoom; dual processor chipsets; Wi-Fi; very high display resolution; and operating systems such as BlackBerry, Windows Mobile, Palm, or Android. These devices also include netbooks. (Service plans for USB modems and PC cards purchased at a discount are subject to a \$175 ETF.) Advanced Devices generally have more complex chip sets, microprocessors and licensed software that perform more functions than regular phones. A list of Advanced Devices is available at [www.verizonwireless.com/advanceddevices](http://www.verizonwireless.com/advanceddevices), and is attached as Exhibit A to this response.

attached as Exhibit C.) Verizon Wireless' television advertisements for Advanced Devices and regular handsets similarly disclose the maximum amount of the applicable ETF, and Verizon Wireless' radio advertisements also disclose the existence of the ETF.

During a sales transaction, and prior to the customer selecting a service plan, Verizon Wireless informs the prospective customer of the amount of any applicable ETF, as well as the amount by which that ETF decreases over time. The amount of any applicable ETF does not depend on the type of postpaid service plan a consumer chooses. Instead, the amount depends on whether the customer has chosen a month-to-month contract (\$0 ETF) or a one- or two-year contract (ETF starting at \$175 or \$350, depending on whether the customer has purchased a regular or an Advanced Device at a discount at the time of activation). Customers who choose a one- or two-year contract in return for a regular wireless device at a discount are subject to an ETF that starts at \$175. Customers who choose a one- or two-year contract in return for an Advanced Device at a discount are subject to an ETF that starts at \$350. The ETF declines over time (\$5 or \$10 each month completed by the customers for the \$175 ETF or \$350 ETF, respectively).

For customers signing up for service in a Verizon Wireless retail store, the amount of any applicable ETF associated with the device and contract length desired by the customer is disclosed in written materials provided to the customer. Customer representatives are trained to inform customers orally of the amount of any applicable ETF associated with a device and the contract length selected by the customer. The Verizon Wireless Customer Agreement that the customer receives at the point of sale provides:

**What Happens if My Service is Canceled Before the End of My Contract Term?**

You're agreeing to subscribe to a line of Service either on a month-to-month basis or for a minimum contract term, as shown on your receipt or order confirmation. (If your Service is suspended without billing, that time doesn't count toward completing your contract term.) Once you've completed your contract term, you'll automatically become a customer on a month-to-month basis for that line of Service. **If you cancel a line of Service, or if we cancel it for good cause, during its contract term, you'll have to pay an early termination fee. If your contract term results from your purchase of an advanced device after November 14, 2009, your early termination fee will be \$350 minus \$10 for each full month of your contract term that you complete. (For a complete list of advanced devices, check [www.verizonwireless.com/advanceddevices](http://www.verizonwireless.com/advanceddevices).) Otherwise, your early termination fee will be \$175 minus \$5 for each full month of your contract term that you complete. Cancellations will become effective on the last day of that month's billing cycle, and you are responsible for all charges incurred until then. Also, if you bought your wireless device from an authorized agent or third-party vendor, you should check if they charge a separate termination fee.**

Verizon Wireless' *Your Guide* brochure, which describes the wireless plans and the terms and conditions associated with those plans and is provided to prospective customers in Verizon Wireless retail stores, further provides:

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#### Early Termination Fees

The early termination fee is up to \$175 or up to \$350 if your contract terms results from your purchase of an Advanced Device after November 14, 2009. For a complete list of Advanced Devices, go to [verizonwireless.com/advanceddevices](http://verizonwireless.com/advanceddevices).

(Copies of Verizon Wireless' *Welcome Guide*, which includes the Verizon Wireless Customer Agreement, and Verizon Wireless' *Your Guide* consumer brochure are attached as Exhibits D and E, respectively.)

The "price cards" for devices displayed in Verizon Wireless retail stores indicate whether the device is an Advanced Device, and also disclose the full retail, one-year contract and two-year contract prices, as well as details about the amount and nature of any available rebate. (An example of the price card for the Motorola DROID, Advanced Device, is attached as Exhibit F.)

Finally, at the time of contract acceptance, the customer electronically signs a receipt that discloses the contract end date and the applicable ETF. (A copy of an actual receipt signed by a customer on November 17, 2009 – redacted to remove customer-identifying information – is attached as Exhibit G.)

For customers signing up for service through Verizon Wireless' telesales group, Verizon Wireless telesales representatives are trained orally to inform customers which ETF amount applies, depending on the device and contract length chosen by the customer. The *Welcome Guide* and *Your Guide* brochures and a receipt disclosing the contract term and the existence of the ETF (attached as Exhibit H), are sent by Federal Express to the customer along with the customer's selected equipment before the customer accepts the contract electronically through a call to an interactive voice response (IVR) system. For customers accepting a two-year contract, the IVR states:

Thank you for activating service with Verizon Wireless. Information regarding your service is included with your shipment and can be found on the receipt, in the brochure and in the Welcome Guide.

Do you understand that you are agreeing to a two-year minimum term that begins on the date you received your equipment, and that an early termination fee of up to \$175 or \$350 will apply if service is canceled prior to the end of that minimum term, as detailed in the materials included in your shipment?

If yes, press 1.

If no, press 2.

To hear this again, press 7.

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Page 6

For customers signing up for service through Verizon Wireless' on-line store, [www.verizonwireless.com](http://www.verizonwireless.com), information regarding the ETF structure is provided through the on-line purchase path. A customer shopping for service and devices through the on-line store can start the purchase process either by selecting a device (and then selecting a compatible plan), or selecting a plan (and then selecting a compatible device). Regardless whether the customer selects the device or plan first, when the customer gets to the plan page, the "Calling Plan Information" scroll box discloses the ETF amount and structure ["Early Termination Fee: Up to \$175, or up to \$350 per line for Advanced Devices (see [www.verizonwireless.com/advanceddevices](http://www.verizonwireless.com/advanceddevices)), per line for one- or two-year minimum terms."]. (An example of the on-line page for available Voice and Email Plans for the DROID, with the complete contents of the "Calling Plan Information" scroll box, is attached as Exhibit I.)

Further, before the customer accepts the contract on-line, the Verizon Wireless Customer Agreement (which also describes the ETF structure and how the ETF declines over time) is presented to the customer, along with the summary paragraph above the "I accept" box that similarly discloses the ETF:

I agree to the current Verizon Wireless Customer Agreement (CA), including the Calling Plan, (with Extended Limited Warranty/Service Contract, if applicable) and other terms and conditions for services and selected features I have agreed to purchase as reflected on this order, and which I have had the opportunity to review. I understand that I am agreeing to an early termination fee of up to \$175, or up to \$350 on Advanced Devices (see [www.verizonwireless.com/advanceddevices](http://www.verizonwireless.com/advanceddevices)), limitations of liability for service and equipment, settlement of disputes by arbitration and other means instead of jury trials and other important terms in the CA.

I understand that if I do not agree to the Verizon Wireless Customer Agreement Terms and Conditions, I should click on the "Cancel" button below to discontinue my order with Verizon Wireless.

(A copy of the on-line acceptance page is attached as Exhibit J.)

Within 5 days of a customer accepting a new contract, through any of the sales channels, Verizon Wireless sends each customer a letter that confirms the details of the customer's chosen plan, the contract end date, and the applicable ETF. (A copy of a Verizon Wireless confirmation letter is attached as Exhibit K.) Even after all of these disclosures, a customer can always cancel service and return new equipment without any ETF within 30 days of activation pursuant to Verizon Wireless' return/cancellation program (explained more fully in response to Question 3, below).

*2. Similarly, how can customers learn about the formula for prorating the ETF? Does Verizon Wireless provide the full terms and conditions, including the proration formula, anywhere*

*other than in the formal Customer Agreement? If so, where? For example, is any relevant information provided on monthly bills? What is the format of the information provided? How can customers learn about the amount they will be charged if they terminate their service plan on a given date?*

**Response:** If an ETF starts at \$175, that ETF declines by \$5 per month for each month of the contract term that the customer completes. If an ETF starts at \$350, that ETF declines by \$10 per month for each month of the contract term that the customer completes. That formula is explained in the Verizon Wireless Customer Agreement, which is available in the *Welcome Guide* that is provided to each new customer activating service in a retail store or through telesales, and also through a direct link at the bottom of every page of [www.verizonwireless.com](http://www.verizonwireless.com). The formula is stated in the Customer Agreement as follows:

**If your contract term results from your purchase of an advanced device after November 14, 2009, your early termination fee will be \$350 minus \$10 for each full month of your contract term that you complete. (For a complete list of advanced devices, check [www.verizonwireless.com/advanceddevices](http://www.verizonwireless.com/advanceddevices).) Otherwise, your early termination fee will be \$175 minus \$5 for each full month of your contract term that you complete. Cancellations will become effective on the last day of that month's billing cycle, and you are responsible for all charges incurred until then.**

Verizon Wireless Sales or Customer Care representatives will explain the formula, and calculate the applicable ETF for any particular customer, upon request. The proration formula is not included on Verizon Wireless' monthly bills to its customers.

*3. Please provide the details of any trial period in which customers may discontinue service without being subject to the increased ETF. Do customers have an opportunity to review their first bill before the trial period expires? How is this information communicated to prospective and current customers?*

**Response:** Verizon Wireless offers a "Worry Free Guarantee" that allows customers to cancel service for any reason within thirty days of activation. As long as the customer returns during that time period any device that he or she purchased at a discount from Verizon Wireless, the customer is not subject to any ETF. Information about Verizon Wireless' return and cancellation period is included in the *Welcome Guide*, and is also included through a direct link at the bottom of every page of [www.verizonwireless.com](http://www.verizonwireless.com). Depending on the customer's bill cycle, a customer may or may not receive his or her first bill prior to the expiration of the thirty-day return/cancellation period. However, customers that sign up at a store receive an estimated calculation of their first bill at the point of sale. In addition, even if they do not receive their first bill during the return/cancellation period, customers signing up for service are sent a letter confirming their agreement within five days of activation. The letter details the plan selected by the customer, the contract term, the contract end date, and the ETF. (A copy of a Verizon Wireless Confirmation Letter is attached as Exhibit K.) By following the link to

[www.verizonwireless.com/care](http://www.verizonwireless.com/care) identified in the Confirmation Letter next to "Questions," or calling Customer Care, the customer can also access information on the Worry Free Guarantee.

4. *Please describe the rationale for the increase in the ETF for an "advanced device." According to press accounts of statements by a Verizon spokesperson, "[t]his has to do with the cost we pay for the device . . . [which] is far north of" the subsidized price at which Verizon makes the device available to customers. In particular, please explain: (1) the cost differentials that Verizon pays for advanced devices over what it charges its customers; (2) the ETF levels, proration schedules, and other terms and conditions of ETFs; (3) how the levels of ETFs, together with the terms and conditions, relate to these cost differentials; and (4) how this relationship varies among devices and/or among "advanced devices."*

**Response:** Term contracts with ETFs are mutually beneficial. They benefit consumers by enabling them to obtain access to advanced services at a significantly lower up-front cost, and they benefit Verizon Wireless by providing a steady, predictable stream of revenue that allows Verizon Wireless to recoup the extraordinarily expensive investments required to support its wireless network and operations and the cost of providing the devices at a substantial discount.<sup>11</sup> When a customer chooses to terminate early, the ETF helps Verizon Wireless recoup a portion of these costs.

The cost difference between Verizon Wireless' purchase price and the price it charges to customers varies among the numerous devices that Verizon Wireless sells. On average, the cost differential, *i.e.*, the difference between the amount Verizon Wireless pays manufacturers for the device and the price it charges to customers on term contracts, is more than twice as large for Advanced Devices (now subject to an ETF with a starting point of \$350) than it is for more basic devices (which continue to have a starting ETF of \$175). The description of the declining ETF in Verizon Wireless' Customer Agreement is quoted above in response to Question 2.

In addition to the difference between the purchase and selling prices of devices, Verizon Wireless incurs additional costs to sign up customers, such as advertising costs, commissions for sales personnel, and store costs. These costs are higher for Advanced Devices: for example, it takes more time (and hence increases the cost to Verizon Wireless) for sales and customer care representatives to handle customer inquiries regarding the complex advanced features and functionalities of Advanced Devices.

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<sup>11</sup> See Verizon Wireless Ex Parte Letter and Enclosure, WT Docket No. 05-194 (filed Oct. 25, 2005) (declaration of Professor Jerry Hausman). Dr. Hausman's economic analysis concluded that ETFs have "benefited consumers and increased subscribership to wireless services. Without ETFs, overall prices would be higher, and the rate structures would tend to transfer costs to consumers." Moreover, "rate structures containing ETFs allow carriers to lower up-front consumer costs for the more expensive handsets that are necessary to take advantage of the new high-speed data transmission and other new services from a 3G network."

Verizon Wireless also makes significant ongoing investments in its broadband networks and services that support Advanced Devices. These substantial costs, as well as other related operating costs, are put at risk when customers fail to fulfill a contractual term to which they agreed when they signed up for service and received an Advanced Device at a heavily discounted price.

The mix of devices Verizon Wireless sells has shifted dramatically towards these Advanced Devices. As a result, the overall cost to the company for providing and supporting devices to customers at low up-front cost has increased substantially. The two-tier ETF structure reflects the differences described above in the costs and risks associated with Advanced Devices versus regular devices.

The \$350 ETF for Advanced Devices reflects the substantially higher costs and risks of providing mobile broadband service. Verizon Wireless incurs these costs with the expectation that customers will enable Verizon Wireless to recoup them over time. Indeed, a customer with an Advanced Device on a voice and data service plan typically agrees to pay substantially more in monthly service fees, as compared to a customer with a more basic phone on a voice-only plan. The new ETF structure with an ETF starting at \$175 for regular devices and at \$350 for Advanced Devices reflects these differences. The \$350 ETF does not fully compensate Verizon Wireless for all these costs, particularly for customers who terminate at a relatively early point in the contract term, but it helps the company recover at least a portion of them.<sup>12</sup>

*5. We are interested in learning whether, and to what extent, the increase in the ETF is the result of increases in the wholesale price of "advanced devices" charged by equipment manufacturers, and whether any such cost increases are uniform across all "advanced devices." Does Verizon Wireless contemplate a similar increase in ETFs in the near future for any other devices and services?*

**Response:** The response to Question 4 explained why Verizon Wireless has implemented a higher ETF for Advanced Devices, including factors such as the costs to Verizon Wireless of supplying Advanced Devices to customers, the rapidly increasing demand of customers for those devices compared to regular devices, and the differential between the purchase price Verizon Wireless pays to manufacturers and the price it charges to customers. Verizon Wireless has no present plans to increase the ETF in the near future for other services and devices. Like any competitive business, Verizon Wireless will continue to assess the need for further changes to its pricing structures, including ETF pricing, as economic conditions change in the future.

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<sup>12</sup> Indeed, in the absence of an ETF, the company would be entitled to recover a far greater amount from customers who terminate early. Unless the ETF is viewed as a fee for the exercise of an option to terminate early, customers who terminate before the end of the contract term would be breaching their contractual obligation and would be liable for damages—computed as the revenue that they would have paid minus the costs that are avoided by not continuing to provide service.

6. *It appears that if a customer cancels a two-year contract after 23 months, the customer would still owe an ETF of \$120. Is this correct? If the ETF is meant to recoup the wholesale cost of the phone over the life of the contract, why does a \$120 ETF apply?*

**Response:** The new ETF structure for Advanced Devices begins at \$350 and declines by \$10 per month for a two-year contract. Thus, a customer terminating in the last month of a two-year contract term could be assessed an ETF of \$120. This ETF structure is fair and reasonable for several reasons. *First*, taking customers who terminate their contracts before the end of the contract term as a whole, Verizon Wireless still incurs a financial loss from early terminations, even with the \$350 ETF. On average, customers who terminated early did so with more than twelve months still left on their contracts. Verizon Wireless estimates that, at the twelve month point in the contract term, its typical loss from the early termination is more than double the applicable remaining ETF amount for an Advanced Device (\$230). Were Verizon Wireless to prorate the ETF in a manner that would reduce its amount to zero in the last month of the contract, the net losses to the company would be even greater.

*Second*, prorating the ETF to zero in the last month would mean that, to recoup the same amount of the losses caused by early terminations as a whole, Verizon Wireless would have to set the starting amount for the ETF higher than \$350. Customers as a whole would be worse off if Verizon Wireless were to take this approach because early terminations occur disproportionately in the early part of the contract term and relatively few customers terminate near the end of the contract term.

*Third*, customers nearing the end of their contract term have choices if they want to avoid the remaining ETF amount. For example, customers could simply wait for their contract to expire because it would generally be more economic for them to do so. Moreover, customers who terminate walk away with a device that retains value.

Contrary to the implication of the question, the ETF is not *limited* to the recovery of the wholesale cost of the device over the life of the contract. As explained in response to Question 4, the ETF partially compensates Verizon Wireless for all the costs and risks of providing service, which include advertising, commission, store costs, and network costs.

7. *We understand that Verizon Wireless offers a month-to-month service plan for devices purchased at full retail price from Verizon Wireless or a third party. Is this month-to-month option available for consumers purchasing "advanced devices"? If so, how would a customer find out about that option? If not, are there other options for consumers who wish to purchase an "advanced device" and a Verizon Wireless service plan without an ETF? What criteria does Verizon Wireless use to decide which devices and service plans are subject to the increased ETF? Do the terms of the increased ETF vary depending on consumers' service plans?*

**Response:** Verizon Wireless offers a month-to-month option for all service plans, including those service plans associated with Advanced Devices. The *Your Guide* brochure

discloses the available contract term lengths for all plans, including the month-to-month option. Prospective customers can learn of the month-to-month option from any Verizon Wireless Sales or Customer Care representative. On the website, handset pricing for the month-to-month option is available through a pull-down menu on the page of handset choices.

One-year and two-year contracts are subject to the ETF starting at \$350 for customers who purchase an Advanced Device at the price associated with the term commitment. The terms relevant to the increased ETF do not vary by service plan.

As noted in the response to Question 1, the "Advanced Device" category includes devices with a combination of advanced capabilities, which may include: a premium HTML browser; high-resolution MP camera with optical zoom; dual processor chipsets; Wi-Fi; very high display resolution, and operating systems such as BlackBerry, Windows Mobile, Palm, or Android. These devices also include netbooks. (Service plans for USB modems and PC cards purchased at a discount are subject to a \$175 ETF.) Advanced Devices generally have more complex chip sets, microprocessors and licensed software that perform more functions than regular phones. A list of "Advance Devices" is available at [www.verizonwireless.com/advanceddevices](http://www.verizonwireless.com/advanceddevices) and is also attached as Exhibit A.

*8. When does Verizon Wireless charge usage fees for access to Verizon Mobile Web? In particular, is there a minimum data amount or level of access that triggers charges, and if so, what is that amount or level? Which phones sold by Verizon have individual keys pre-programmed to provide for one-press access to various Mobile Web services? Is it correct that customers are charged for minimal, accidental usage by customers using these phones?*

**Response:** Usage fees for Verizon Wireless' mobile Internet service, Mobile Web, apply when a customer launches the Internet browser and then navigates away from the default Mobile Web homepage to sites other than a Verizon Wireless customer care site (e.g., My Verizon, the on-line customer account portal). Usage fees are not charged when a customer simply launches the Internet browser and lands on the Verizon Wireless Mobile Web homepage, which is the default setting.

Usage is measured by increments of megabytes and is charged based on the data plan to which the customer subscribes. Customers who do not subscribe to prepaid or unlimited transport bundles are charged \$1.99 for each megabyte, or fraction thereof, of data usage per month.

Most devices sold today have a default setting so that when the Internet browser is activated it will immediately link to the Mobile Web homepage (which, as indicated above, would not cause a customer to incur a fee). Where available, this link is usually on the main menu of the device for convenience since it is a commonly used application, or is accessed by pressing a "four-way" navigation key on the device. The location of the browser link has varied over the past ten years and on hundreds of Mobile Web capable devices, and is not always configurable from the main menu.